# IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

JIMMY F. MEANS,

Plaintiff,

VS.

JO ANNE B. BARNHART, Commissioner of the Social Security Administration,

Defendant.

No. 4:02-cv-40642

ORDER

Plaintiff seeks review of the Social Security Commissioner's decision denying disability insurance benefits under Title XVI of the Social Security Act (the "Act"), 42 U.S.C. § § 401 et seq. This Court reviews the final decisions of the Social Security Commissioner pursuant to 42 U.S.C. § 405(g).

### I. PROCEDURAL HISTORY

On March 20, 2001, Claimant Jimmy F. Means ("Means") filed the present application for disability benefits alleging an inability to work since October 1, 2000. The application was initially denied on June 11, 2001, and was further denied by reconsidered determinations on November 1, 2001. Means filed a timely request for hearing on November 16, 2001. After due notice, the hearing was held on April 10, 2002, before Administrative Law Judge John P. Johnson ("ALJ").

In a detailed opinion filed on August 27, 2002, the ALJ denied Means benefits under the Act, concluding Means was not disabled within the meaning of the Act and could perform work which existed in the national economy in significant numbers. Means filed a timely request for review which was denied by the Appeals Council on November 15, 2002. The Appeals Council determined that the contentions raised on appeal did not provide a basis for changing the ALJ's decision. Therefore, the ALJ's decision of August 27, 2002, stands as the final decision of the Social Security Commissioner. Means commenced the present action on December 20, 2002.

#### II. PERTINENT FACTS<sup>1</sup>

Jimmy Means was born on November 15, 1953, and was 48 years old at the time of his last administrative hearing. His educational history shows that he is a high school graduate who received a degree in Structural Drafting in 1976. Means has also completed courses in computer software and computer hardware basics. His past work experience includes work as a food processor, chore-worker, self-employed screen printer, and self-employed handyman. Since his alleged disability onset date, Means has worked off and

<sup>&</sup>lt;sup>1</sup> The Court has thoroughly reviewed the record in this case and has read every evaluation, opinion, letter, and note therein. The Court finds the factual summary in the ALJ's opinion is both accurate and exhaustive and therefore finds it unnecessary to repeat that summary in this Order.

on as a self-employed handyman and screen printer. This employment has earned him income of \$1,953 in 2000 and \$1,820 in 2001.

Means' social history indicates that he has been married once. He was married in 1975 with the union ending in divorce in 1998. He has had one child. At the time of the hearing, Means indicated that he had some level of contact with his daughter.

### III. FINDINGS OF THE COMMISSIONER

In determining whether Means is disabled, the ALJ employed the five-step sequential evaluation pursuant to 20 C.F.R. § 404.1520 and found:

- 1. The claimant met the disability insured status requirements of Title II of the Act on October 1, 2000, his alleged disability onset date, and has continued to meet those requirements through the date of this decision.
- 2. The claimant has not engaged in substantial gainful activity since his alleged disability onset date of October 1, 2000.
- 3. The medical evidence establishes that the claimant has non-severe hypothyroidism and a severe bipolar affective disorder. The latter impairment has resulted in mild restrictions of activities of daily living and moderate difficulties with social functioning. He has mild difficulties with concentration, persistence, and pace. There is no indication of any episode of decompensation. In addition, the evidence does not establish the presence of a residual disease process resulting in such marginal adjustment that even a minimal increase in mental demands or change in the environment would cause decompensation, nor is there a demonstrated inability to function outside a highly supportive living arrangement.

- 4. The claimant he [sic] does not have an impairment or combination of impairments listed in or medically equal to one listed in Appendix 1, Subpart P, Regulations No. 4.
- 5. The claimant's allegations are not supported by the record and can be given but little weight.
- 6. The claimant is not capable of very complex, technical work but can do more than simple, routine, repetitive work. He is not capable of work requiring very close attention to detail. He can tolerate only occasional supervision. He can work at no more than a regular pace and can tolerate mild to moderate stress. He does not have any additional limitations (20 C.F.R. § § 404.1520(e) and 416.920(e)).

(Tr. at 21-22.)

### IV. STANDARD OF REVIEW

A court must affirm the decision of the Commissioner if substantial evidence in the record as a whole supports the decision. 42 U.S.C. § 405(g). "Substantial evidence is less than a preponderance, but enough evidence that a reasonable mind might find it adequate to support the conclusion." Moad v. Massanari, 260 F.3d 887, 890 (8th Cir. 2001). In determining whether existing evidence is substantial, the Court considers "evidence that detracts from the Commissioner's decision as well as evidence that supports it." Young v. Apfel, 221 F.3d 1065, 1068 (8th Cir. 2000) (citing Prosch v. Apfel, 201 F.3d 1010, 1012 (8th Cir. 2000)). A court may not reverse merely because substantial evidence would have supported a contrary decision. Craig v. Apfel, 212 F.3d 433, 436 (8th Cir. 2000). Nor may a court reverse because it would have decided the case differently.

Krogmeier v. Barnhart, 294 F.3d 1019, 1022 (8th Cir. 2002) (citing Woolf v. Shalala, 3 F.3d 1210, 1213 (8th Cir. 1993)). "If, after reviewing the record, the Court finds that it is possible to draw two inconsistent positions from the evidence and one of those positions represents the Commissioner's findings, the court must affirm the commissioner's decision." Pearsall v. Massanari, 274 F.3d 1211, 1217 (8th Cir. 2001).

Title 20 C.F.R. § 404.1520 sets forth the five-step sequential evaluation process which the ALJ must use in assessing the claimant's disability claim. 20 C.F.R. § 404.1520 (2002). A claimant has the burden of establishing that he is entitled to disability benefits by proving the existence of a disability. Roth v. Shalala, 45 F.3d 279, 282 (8th Cir. 1995) (citing Locher v. Sullivan, 968 F.2d 725, 727 (8th Cir. 1992)). If the claimant is able to prove that he is unable to perform his past relevant work, the burden of proof shifts to the Social Security Administration to demonstrate that he can perform other jobs available in the national economy. See Lowe v. Apfel, 226 F.3d 969, 974 (8th Cir. 2000) (citing Cox v. Apfel, 160 F.3d 1203, 1206 (8th Cir. 1998)).

#### V. DISCUSSION

Means alleges four points of error which he argues necessitate remand. First, the ALJ's conclusions as to Means' residual functional capacity are unsupported by substantial evidence. Second, the ALJ has improperly weighed the evidence submitted by treating and consulting physicians, as well as medical care providers. Third, the ALJ's credibility

assessment is unfair, inappropriate, and unsupported by substantial evidence. Fourth, the ALJ submitted an inaccurate hypothetical to the vocational expert and may not properly rely on the vocational expert's response.

#### A. Substantial Evidence

Means asserts that the ALJ's RFC findings are not supported by substantial evidence, arguing that the ALJ ignored all medical evidence of record in reaching his RFC conclusions. In the RFC findings, the ALJ states that Means "is not capable of very complex, technical work but can do more than simple, routine, repetitive work. He is not capable of work requiring very close attention to detail. He can tolerate only occasional supervision. He can work at no more than a regular pace and can tolerate mild to moderate stress." (Tr. 22.) Means argues that this fails to adequately address the limitations noted by Dr. Garfield, fails to incorporate the specific limitations reported by Dr. Egger, and ignores the findings of Dr. Notch.

"The Commissioner must determine a claimant's RFC based on all of the relevant evidence, including medical records, observations of treating physicians and others, and an individual's own description of his limitations." McKinney v. Apfel, 228 F.3d 860, 863 (8th Cir. 2000). "The current regulations make clear that residual functional capacity is a determination based upon all the recorded evidence. We agree with [claimant] to this extent – the record must include some medical evidence that supports the ALJ's residual

functional capacity finding." <u>Dykes v. Apfel</u>, 223 F.3d 865, 866-67 (8th Cir. 2000) (citation omitted) (citing 20 C.F.R. § 404.1545).

Dr. Egger indicated with a check mark that Means was markedly limited in his "ability to work in coordination with or proximity to others without being distracted by them"; he provided no explanation as to how he reached this conclusion. (Tr. 280.) Dr. Egger proceeded in the same manner in finding that Means was moderately limited in his ability to work "without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods." (Tr. 280.) Again, Dr. Egger offered no observations or support for this finding. (Tr. 280.)

The record demonstrates that Means was able to successfully complete, with good attendance and good grades, two computer courses during a period of time when he was experiencing exacerbated symptoms. Because Means had sufficient concentration, persistence, and pace to perform more than simple, routine, repetitive work on a day-in and day-out basis, even during a period of exacerbated symptoms, as proven by his success in the computer courses, the ALJ found that no weight could be given to Dr. Egger's opinions regarding Means' capacity for working. Further, given that Dr. Egger failed to make clinical findings regarding an impairment in Means' concentration, persistence, or pace, and the fact that evidence existed in the record which tended to contradict the

limitations described by Dr. Egger, the ALJ found that although not to be disregarded, Dr. Egger's opinions regarding Means' limitations could not be given controlling weight.

The ALJ incorporated into Means' RFC those impairments and restrictions noted by Dr. Egger found to be credible and gave specific reasons for determining that certain opinions of Dr. Egger were inconsistent or not supported by the record as a whole. This does not constitute error.

Means claims that the ALJ ignored the findings of Dr. Garfield and Dr. Notch. The portion of the narrative of Dr. Notch cited by Means is merely a summary of the September 17, 2001, treatment notes of Dr. Egger. As such, it can only be given as much weight as that accorded to Dr. Egger's opinions.

Dr. Garfield noted the following with regard to Means' capacity to work: "[W]hile suffering from a severe mental impairment [Means] is capable of engaging in a wide range of unskilled to semi skilled competitive work." (Tr. 213.) Dr. Garfield's opinion and the ALJ's RFC finding are consistent.

The Court's role on review is limited to determining whether the findings are "supported by substantial evidence on the record as a whole." McKinney, 228 F.3d at 863 (citing Prosch, 201 F.3d at 1012). "Substantial evidence is less than a preponderance, but is enough that a reasonable mind would find it adequate to support the Commissioner's

conclusion." <u>Id.</u> The Court may not reverse the Commissioner's decision if there is substantial evidence in the record to support that decision. <u>Id.</u>

After considering all the medical and testimonial evidence, including the consultative examinations and the record as a whole, the ALJ determined Means' impairments and restrictions were not disabling within the meaning of the Act. The ALJ considered and recognized that Means suffers from a mental impairment and consequently found Means was limited in the types of work he could perform, noting that Means has mild difficulties with concentration, persistence, and pace. The ALJ also found that Means' impairment has resulted in mild restrictions of his daily living activities and moderate difficulties with social functioning. This record can be read to support that conclusion. The Court cannot conclude that the ALJ's formulation of Means' RFC was error.

## **B.** Properly Weighing Evidence

The ALJ is required to give treating physicians' opinions great weight, but such opinions must be consistent with the treating physicians' own medical records and consistent with the evidence as a whole. See 20 C.F.R. § 416.927; Rogers v. Chater, 118 F.3d 600, 602 (8th Cir. 1997).

Means argues that the ALJ ignored the opinions of each physician of record – Dr. Egger, Dr. Notch and Dr. Garfield. Means further contends that the ALJ blatantly ignored the records provided by social worker Sally Feldhacker. The Court disagrees.

The ALJ did not ignore any physician's opinion. The ALJ expressly considered the opinions of Drs. Egger, Notch, Garfield, and social worker Feldhacker, giving specific reasons for determining certain opinions were inconsistent or not supported by the record as a whole.

## 1. Dr. Egger

The ALJ clearly considered the opinions of Dr. Egger. However, as discussed above, the ALJ concluded that given Plaintiff's ability to successfully complete two computer courses during a period of exacerbated symptoms, no weight could be accorded to Dr. Egger's opinion that Plaintiff was not capable of maintaining concentration, persistence, and pace necessary to complete tasks in a timely manner. Further, because Dr. Egger did not provide support for his assertions regarding Means' other limitations, the ALJ concluded they could not be given controlling weight.

### 2. Sally Feldhacker

The ALJ reviewed Feldhacker's treatment notes and accurately stated that they appeared only to chronicle Means' complaints and topics that were discussed during their meetings. The ALJ concluded that Feldhacker's notes only described Means' condition in a general manner, offering little additional insight into his condition. The ALJ finding that, as such, they could be given but little weight is not inappropriate.

### 3. Drs. Garfield and Notch

Finally, the ALJ addressed the opinions of Dr. Garfield and Dr. Notch in his decision, pointing out that they both noted Means had moderate problems with sustained concentration, following instructions and accepting criticism, getting along with his coworkers and peers, completing a normal workday and workweek, and working without breaks of an inordinate number or length. The Court finds the ALJ properly weighed the medical evidence when determining the record did not support a conclusion that Means was precluded from all work activity.

## C. Credibility Assessment

Means argues that the ALJ's credibility assessment was unfair, inappropriate, and unsupported by substantial evidence. Specifically, Means argues that the ALJ incorrectly found that Means' allegations could be given little weight.

Although the subjective testimony of a claimant must be considered before deciding whether the claimant is in fact disabled, <u>Barry v. Shalala</u>, 885 F. Supp. 1224, 1246 (N.D. Iowa 1995), the ALJ may discount subjective complaints when based on specific inconsistencies between the claimant's complaints and the record as a whole. <u>See Kisling v. Chater</u>, 105 F.3d 1255, 1257 (8th Cir. 1997); <u>see also Hinchey v. Shalala</u>, 29 F.3d 428, 432 (8th Cir. 1994); <u>Bishop v. Sullivan</u>, 900 F.2d 1259, 1262 (8th Cir. 1990) (citing <u>Polaski v. Heckler</u>, 739 F.2d 1320, 1322 (8th Cir. 1984)); <u>Barry</u>, 885 F. Supp. at 1246).

The ALJ is free to doubt the claimant's subjective complaints, but this determination must be based on the ALJ's consideration of (1) the claimant's daily activities; (2) the duration, frequency, and intensity of the pain; (3) precipitating and aggravating factors; (4) dosage, effectiveness, and side effects of medications; and (5) functional restrictions. See Polaski, 739 F.2d at 1322. "When rejecting a claimant's complaints of pain, the ALJ must make an express credibility determination, must detail reasons for discrediting the testimony, must set forth inconsistencies, and must discuss the Polaski factors." Baker v. Apfel, 159 F.3d 1140, 1144 (8th Cir. 1998) (citing Cline v. Sullivan, 939 F.2d 560, 565 (8th Cir. 1991)). However, "an ALJ is not required to explicitly discuss each Polaski factor in a methodical fashion so long as he acknowledges and considers those factors before discounting a claimant's subjective pain complaints." Robbins v. Apfel, No. C97-3078, 1999 WL 33657699, at \*8 (N.D. Iowa Mar. 11, 1999) (citing Brown v. Chater, 87 F.3d 963, 966 (8th Cir. 1996)).

In making his credibility determination, the ALJ first noted the differing reports regarding Means' daily activities, observing that Means performed activities that were inconsistent with his allegations. In his testimony, Means stated that he does little during the day and that many of the chores are left up to his daughter; however, in his supplemental disability report Means indicated that he did limited chores, did his own grocery shopping, and was able to go out and visit others. There is also evidence that

Means attended a support group for divorced individuals and that he dated for a short period of time. The ALJ concluded that Means' testimony regarding his daily activities was unsupported by the record and could not be given credence. The ALJ further noted that given Means' performance in the two computer courses mentioned above, his allegations regarding his capacity to work were generally not credible and could be given but little weight.

Means asserts that the observations of Dr. Egger, therapist Sally Feldhacker, and lay witnesses Laura Griswold and Summer Means lend credibility to Means because of the consistency of reporting and observation. Although each of these individuals provided support for the ALJ's conclusion that Defendant indeed suffers from a mental impairment, their observations appear inconsistent with Defendant's undisputed success in his computer classes, which required him to attend public classes with others on a daily basis, concentrate, and function at a pace required by such intensive course work, and appear inconsistent with his ability, evidenced in the record, to get out and function in the company of others.

The ALJ gave detailed reasons for discrediting Means' subjective complaints by setting forth specific inconsistencies as required by <u>Polaski</u>; and, after considering all the factors, the ALJ determined there was nothing to support the conclusion that Means was precluded from all work activity. On this record, the determination seems a close call.

However, after a careful examination of the record as a whole, and with due regard for this Court's standard of review, the Court finds there is substantial evidence to support the ALJ's determination that Means' allegations regarding his ability to work were not entirely credible.

## D. Accurate Hypothetical

Means argues that the hypothetical is wholly inconsistent with the limitations described by Means, lay testimony, therapy records, medical observations, and the opinions of Dr. Egger, and that the vocational expert's opinion is therefore flawed. The content of a hypothetical is necessarily a product of impairments supported by the record and not properly disregarded as not supported by the record.

"A hypothetical question posed to the vocational expert is sufficient if it sets forth impairments supported by substantial evidence in the record and accepted as true by the ALJ." Hunt v. Massanari, 250 F.3d 622, 625 (8th Cir. 2001) (citing Prosch, 201 F.3d at 1015). "[T]he ALJ may exclude any alleged impairments that [he] has properly rejected as untrue or unsubstantiated." Id. (citing Long v. Chater, 108 F.3d 185, 187 (8th Cir. 1997).

As explained above, it was not error for the ALJ to discredit those portions of the treating physicians' assessments which were inconsistent with other facts in the record; therefore, the ALJ was not required to present those assessments to the vocational expert.

<u>See Rogers</u>, 118 F.3d at 602 (finding the ALJ appropriately weighed the treating physician's opinion and the hypothetical question adequately represented the limitations of the claimant).

## VI. CONCLUSION

The Court finds the decision of the Commissioner is supported by substantial evidence, and remand is not warranted in this case. The decision of the Commissioner is **affirmed**, and the case is **dismissed**. The Clerk is directed to enter judgment for the Defendant and against the Plaintiff.

### IT IS SO ORDERED.

Dated this 25th day of March, 2004.

TAMES E. GRITZNER, TUDGE/ UNITED STATES DISTRICT COURT